

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

(1)	KINSALE INSURANCE COMPANY,)	
)	
	Plaintiff,)	
)	
v.)	CASE NO. 22-cv-379-CVE-SH
)	
(2)	MID-AMERICA OUTDOORS LLC;)	
)	
(3)	GAYLA ROBINETT, an individual;)	
	and)	
)	
(4)	DAVID ROBINETT, an individual;)	
)	
	Defendants.)	

COMPLAINT FOR DECLARATORY RELIEF

KINSALE INSURANCE COMPANY (“Kinsale”) files suit against MID-AMERICA OUTDOORS LLC (“Mid-America”), GAYLA ROBINETT, and DAVID ROBINETT, and in support alleges:

NATURE OF THE ACTION

1. This is an action under 28 U.S.C. § 2201 for a declaration that an insurance policy’s Motorized Vehicles Sublimit Endorsement applies to an underlying lawsuit arising out of an All-Terrain Vehicle crash at the Mid-America racetrack.

JURISDICTION AND VENUE

2. Jurisdiction exists under 28 U.S.C. § 1332 because there is complete diversity of citizenship between plaintiff and defendants, and the amount in controversy exceeds \$75,000, exclusive of attorney’s fees, interest, and costs.

3. Venue is proper in this district because Kinsale issued and delivered the policy in this district, Mid-America has its principal place of business in this district, and the underlying

litigation against Mid-America and the Robinetts is pending in this district. *See* 28 U.S.C. § 1391(b)(1) and (2).

4. All conditions precedent occurred, have been performed, or were waived.

THE PARTIES

5. Kinsale is an Arkansas corporation with its principal place of business in Virginia.

6. Mid-America is a limited liability company organized under the laws of Oklahoma.

All members of Mid-America are citizens of Oklahoma.

7. Gayla Robinett is a member of Mid-America and a citizen of Oklahoma.

8. David Robinett is a member of Mid-America and a citizen of Oklahoma.

THE INCIDENT

9. Mid-America operates a 1600-acre off-road vehicle recreational park and racetrack in Jay, Oklahoma.

10. On or around May 30, 2021, a minor, S.B., was involved in an accident while operating an All-Terrain Vehicle (“ATV”) at the Mid-America racetrack.

11. On February 1, 2022, S.B. filed a lawsuit against Mid-America, the Robinetts, and non-party Mid-America Power Sports LLC in Oklahoma federal court bearing Case No. 4:22-cv-00052 (“underlying lawsuit”).

12. The underlying lawsuit alleges Mid-America and the Robinetts owed a duty to S.B. and failed to clear the racetrack, failed to supervise employees, and failed to ensure one flow of traffic causing S.B. to suffer injuries to his mind and body. A copy of the operative complaint in the underlying lawsuit is attached as Exhibit “A.”

THE KINSALE POLICY

13. Kinsale issued a commercial general liability policy to “Mid America Outdoors LLC” as the Named Insured bearing Policy Number 0100146561-0 effective from 04/07/2021 to 04/07/2022. A copy of the Kinsale policy is attached as Exhibit “B.”

14. The policy includes an Amended Limit of Insurance – Motorized Vehicles Endorsement, Form IL 12 01 11 85, which provides:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGES

POLICY NUMBER 0100146561-0	POLICY CHANGES EFFECTIVE 04/07/2021 12:01AM at the Named Insured address on the Declarations	COMPANY Kinsale Insurance Company
Mid America Outdoors LLC		
COVERAGE PARTS AFFECTED ALL COVERAGE PARTS		

CHANGES

**AMENDED LIMIT OF INSURANCE – MOTORIZED VEHICLES
(COMMERCIAL GENERAL LIABILITY)
SUPPLEMENTARY PAYMENTS WITHIN SUBLIMITS**

**This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE**

SCHEDULE	
Each Occurrence Limit	\$25,000
General Aggregate Limit	\$100,000

The amount shown in the Schedule above is the maximum amount we will pay for all damages and all Supplementary Payments arising out of any claim or “suit” because of “bodily injury,” “property damage” or “personal and advertising injury” arising out of, related to or in any way involving the operation, maintenance, use, entrustment to others, or loading or unloading by you or others of any “motorized

vehicle,” or any alleged negligent hiring, employment, training, supervision, or retention of any employee or agent of any insured in the use of “motorized vehicle.”

The Limit of Insurance shown in the Schedule above applies to any claim or “suit” regardless of whether operation, maintenance, use, entrustment to others, or loading or unloading by you or others of any “motorized vehicle” is the initial precipitating cause or is in any way a cause, and regardless of whether any other actual or alleged cause contributed concurrently, proximately or in any sequence, including whether any actual or alleged “bodily injury,” “property damage” or “personal and advertising injury” arises out of a chain of events that involves any operation, maintenance, use, entrustment to others, or loading or unloading by you or others of any “motorized vehicle.”

The Limits of Insurance shown in the Schedule above are shared between all Coverages included in this Policy and are subject to, and not in addition to, the applicable Limits of Insurance shown on the Commercial General Liability Declarations. This endorsement in no way increases the Each Occurrence or Personal and Advertising Injury Limit or any Aggregate Limits of Insurance shown on the Declarations of this Policy.

For purposes of this endorsement the **COMMERCIAL GENERAL LIABILITY COVERAGE FORM** is amended as follows: ...

B. SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B is deleted in its entirety and is replaced by the following:

1. We will pay Supplementary Payments with respect to any claim we investigate or settle, or any “suit” against an insured we defend, and these payments will reduce the Limits of Insurance shown in the Schedule above.

Supplementary Payments include:

- a. All expenses we incur, including all investigative expenses, defense costs, expenses, attorneys’ fees, litigation costs and expenses, but do not include our overhead or the salaries and wages of any of our employees. ...

For the purposes of this endorsement, the following is added to the **DEFINITIONS** Section of this Policy:

“Motorized vehicle” means any land vehicle that operates fully or has motion assisted by a motor, or any trailer attached to such vehicle. “Motorized vehicle” includes but is not limited to: ...

2. All-Terrain Vehicles (ATVs), Utility Task Vehicles (UTVs); ...

THIS ACTION

15. Kinsale received notice of the underlying lawsuit.

16. On March 24, 2022, Kinsale wrote to Mid-America and the Robinetts advising that Kinsale would provide a defense in the underlying lawsuit under a reservation of rights. A copy of the reservation of rights letter is attached as Exhibit “C.”

17. Kinsale further advised that the policy has a sublimit of \$25,000 under the Motorized Vehicles Sublimit Endorsement that may limit payment for any damages and defense costs. (Ex. C.)

18. Kinsale then sent letters to counsel for S.B. in the underlying lawsuit to notify them of the eroding Motorized Vehicles Sublimit Endorsement, which expressly limits insurance under the policy to \$25,000 Each Occurrence. Kinsale offered to voluntarily tender the policy’s \$25,000 sublimit. Copies of the letters are attached as Exhibit “D.”

19. Kinsale’s offer to tender the \$25,000 sublimit was rejected.

COUNT I
THE MOTORIZED VEHICLES SUBLIMIT ENDORSEMENT

20. Kinsale incorporates Paragraphs 1 through 19.

21. The policy’s Motorized Vehicles Sublimit Endorsement applies to the claims asserted against Mid-America and the Robinetts in the underlying lawsuit.

22. Kinsale has no responsibility for any damages or defense costs in the underlying lawsuit beyond the policy’s Motorized Vehicles Sublimit Endorsement.

REQUESTED RELIEF

Kinsale requests that this Court:

a. Take jurisdiction and adjudicate the rights of the parties under the policy;

- b. Declare that Kinsale has no responsibility for any damages or defense costs in the underlying lawsuit beyond the policy's Motorized Vehicles Sublimit Endorsement;
- c. Award Kinsale all costs incurred to prosecute this action; and
- d. Award any and all other relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

HOLDEN LITIGATION, *Holden P.C.*



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Pro hac vice applications forthcoming

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